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In re Application of :
Cederberg et al. :
Application No. 09/382,709 :
Filed: August 23, 1999 :
Attorney Docket No. S 855-004-PAT :

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OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed November 24, 2003, and supplemented September 20, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Procedural History:

A Notice of Allowance and a Notice of Allowability were mailed to the address of record on May 6, 2002.

A response was not received to the Notices. Therefore, the application became abandoned as of August 6, 2002.

On August 20, 2002, a Notice to File Corrected Application Papers was mailed to the address of record. A response to the Notice has not been received. Therefore, *even if* the Office held the application not abandoned for failure to respond to the May 6, 2002 Notices, the application would be abandoned for failure to respond to the August 20, 2002 Notice.

On August 26, 2002, a new power of attorney and change of address were submitted.

A Notice of Abandonment was mailed on February 4, 2003.

A petition to withdraw the holding of abandonment was filed on April 16, 2003. A decision dismissing the petition was mailed on October 14, 2003.

A renewed petition to withdraw the holding of abandonment was filed on November 18, 2003. The petition requested that, should the petition to withdraw the holding of abandonment be dismissed, the petition be considered under 37 CFR 1.137(a), or in the alternative under 37 CFR 1.137(b).

A decision dismissing the petition to withdraw the holding of abandonment was mailed on February 18, 2004.

The decision stated, “The application is being forwarded to the Office of Petitions to act on applicant’s alternative Petition to Revive for Unavoidable Delay or Revive for Unintentional Delay.”

Petitioner filed a Supplemental Argument to the previous petition on September 20, 2004.

Analysis:

Since the petition to withdraw the holding of abandonment filed November 18, 2003, was dismissed. The Office of Petitions must consider the November 18, 2003 paper under 37 CFR 1.137(a), or in the alternative, under 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and
- (4) a terminal disclaimer and fee *if* the application was filed on or before June 8, 1995 or *if* the application is a design application.

The instant petition lacks item (1).

Three Notices have been mailed which required replies.

A reply to the Notice of Allowance has been received since the general fee authorization in the April 16, 2003 petition was submitted after the mailing of the Notice of Allowance. The sum of \$650 will be charged for the issue fee.

The file history fails to indicate a response has been submitted in reply to the Notice of Allowability which required corrected drawings.

The file history fails to indicate a response has been submitted in reply to the Notice to File Corrected Application Papers.

For the reasons above, the petition under 37 CFR 1.137(a) will not be granted.

The fee of \$55 will be charged to petitioner's deposit account for the petition under 37 CFR 1.137(a) filed November 18, 2003.

Since the petition under 37 CFR 1.137(a) is being dismissed, the Office normally would consider the petition filed in the alternative under 37 CFR 1.137(b). However, considering all the facts and circumstances, the Office will refrain at this time from considering the merits of the petition under 37 CFR 1.137(b) since such consideration would require the Office charge \$665 to petitioner's deposit account.

As a courtesy, copies of all papers mailed from the Office on May 6, 2002, and August 20, 2002, accompany this decision.

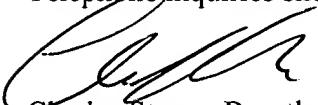
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: Copies of papers mailed from the Office on May 6, 2002, and August 20, 2002